DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in section 2(a) of the "District of Columbia Uniform Controlled Substances Amendment Act of 1998", effective July 24, 1998 (D.C. Law 12-136; D.C. Official Code §48-902.01) ("Act"), and Mayor's Order 98-49, dated April 15, 1998, hereby gives notice of the adoption of the following amendments to Chapter 12 of Title 22 of the District of Columbia Municipal Regulations (DCMR). The amendments to the Schedule of Controlled Substances will add Gamma-Hydroxybutyric Acid (GHB) [other names include "gamma-hydroxybutyrate"; "4-hydroxybutyrate"; "4-hydroxybutanoic acid"; "sodium oxybate"; and "sodium oxybutyrate"] to Schedule I; add any drug product containing Gamma-Hydroxybutyric Acid, including its salts, isomers, and salts of isomers to Schedule III; reschedule Buprenorphine, marketed as Subutex® and Suboxone®, from Schedule V to Schedule III; and correct errors and reformat the listing of some substances in 22 DCMR Chapter 12. All of the enumerated scheduling of controlled substances are included in this rulemaking to provide the public with a single reference to the regulatory provisions governing controlled substances in the District as required by D.C. Official Code §48-902.01. The sections affected by this rulemaking are highlighted in boldface type.

The emergency rules are necessary for the immediate preservation of the public health, safety and welfare of District residents. In recent years, the abuse of GHB has increased substantially. GHB is classified as a central nervous system depressant, and is abused to produce euphoric and hallucinogenic states, and for its alleged role as a growth hormone releasing agent to stimulate muscle growth. GHB can produce drowsiness, dizziness, nausea, visual disturbances, unconsciousness, seizures, severe respiratory depression and coma. Overdose usually requires emergency medical treatment, including intensive care for respiratory depression and coma. GHB is not approved for marketing as a medicine in the United States, although FDA-authorized studies are in progress to examine its potential use in the treatment of cataplexy associated with narcolepsy.

Emergency action is also necessary for Buprenorphine, a semi-synthetic opioid derived from thebaine, to be used in addiction treatment. In December 2001, the U.S. Department of Health and Human Services recommended rescheduling buprenorphine to Schedule III based on a reevaluation of buprenorphine's abuse potential and dependence profile in light of numerous scientific studies and years of human experience, and its current accepted medical use in the United States for the treatment of opioid dependence.

Thus, emergency action is necessary to expand the use of Buprenorphine, a semi-synthetic opioid, marketed as Subutex® and Suboxone®, a mono or single entity buprenorphine product (2 and 8 mg tablets), and (2) Suboxone®, a combination product in a 4:1 ratio of buprenorphine to naloxone (2: 0.5 and 8: 2 mg tablets). These products, high dose sublingual (under the tongue) tablets, are not available to physicians treating thousands of District residents who suffer with an opioid dependence. The Director is undertaking this emergency and proposed rulemaking after considering the eight (8)

factors set forth in section 201 of the Act (D.C. Official Code § 48-902.01), and based upon the scientific and medical evaluations and recommendations of the Secretary of the U.S. Department of Health and Human Services pursuant to 21 U.S.C. 811(a), (b), (c) and (d), and the data gathered and reviewed by the Administrator of the U.S. Drug Enforcement Administration.

The emergency rulemaking was adopted on November 17, 2003 and became effective on that date. The emergency rules will remain in effect for one hundred and twenty days until March 15, 2004, or upon publication of the Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

The Director also gives notice of intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Chapter 12 of Title 22 of the DCMR is amended to read as follows:

CHAPTER 12

CONTROLLED SUBSTANCES ACT RULES

1200 PURPOSE

1200.1 This chapter shall comprise all the enumerated schedules of controlled substances under the District of Columbia Uniform Controlled Substances Act of 1981 (Act), effective August 5, 1981 (D.C. Law 4-29; D.C. Official Code §48-902.01), and all final rulemakings made by the Mayor or designee which add, delete, or reschedule a controlled substance under the authority of section 201 of the Act (D.C. Official Code §48-902.01).

1201 SCHEDULE I ENUMERATED

1201.1 The controlled substances listed in this section are included in Schedule I of the Act unless removed therefrom pursuant to section 201 of the Act:

(a) ***Opiates:*** Unless specifically excepted or unless listed in another schedule, any of the following opiates including their isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation;

(1) Acetylmethadol;
(2) Allylprodine;
(3) Alphacetylmethadol;
(4) Alphameprodine;

(5) Alphamethadol;
(6) Benzethidine;
(7) Betacetylmethadol;
(8) Betameprodine;
(9) Betamethadol;
(10) Betaprodine;
(11) Clonitazene;
(12) Dextromoramide;
(13) Diampromide;
(14) Diethylthiambutene;
(15) Difenoxin;
(16) Dimenoxadol;
(17) Dimepheptanol;
(18) Dimethylthiambutene;
(19) Dioxaphetylbutyrate;
(20) Dipipanone;
(21) Ethylmethylthiambutene;
(22) Etonitazene;
(23) Etoxeridine;
(24) Furethidine;
(25) Hydroxypethidine;
(26) Ketobemidone;
(27) Levomoramide;
(28) Levophenacylmorphan;
(29) Morpheridine;
(30) Noracymethadol;
(31) Norlevorphanol;
(32) Normethadone;
(33) Norpipanone;
(34) Phenadoxone;
(35) Phenampromide;
(36) Phenomorphan;
(37) Phenoperidine;
(38) Piritramide;
(39) Proheptazine;
(40) Properidine;
(41) Propriam;
(42) Racemoramide;
(43) Thiophene;
(44) Trimeperidine;
(45) Acetyl-Alpha-Methylfentanyl;
(46) Alpha-Methylfentanyl;
(47) Alpha-Methylthiofentanyl;
(48) Beta-hydroxyfentanyl;
(49) Beta-hydroxy-3-Methylfentanyl;
(50) 3-Methyfentanyl;

(51) 3-Methythiofentanyl;
(52) MPPP;
(53) Para-fluorofentanyl;
(54) PEPAP;
(55) Thiofentanyl;
(56) Tilidine;

(b) ***Opium Derivates:*** Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Drotebanol;
(10) Etorphine (except hydrochlorine salt);
(11) Diacetylated morphine (heroin);
(12) Hydromorphinol;
(13) Methyldesorphine;
(14) Methyldihydromorphine;
(15) Morphine methylbromide;
(16) Morphine methylsulfonate;
(17) Morphine-N-Oxide;
(18) Myrophine;
(19) Nicocodeine;
(20) Nicomorphine;
(21) Normorphine;
(22) Pholcodine;
(23) Thebacon;

(c) ***Hallucinogenic Substances:*** Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, its salts, isomers and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this paragraph only, the term "isomer" includes the optical, position, and geometric isomers):

(1) 4-Bromo-2,5-dimethoxyamphetamine;
(2) 2,5-Dimethoxyamphetamine;
(3) 4-Methoxyamphetamine;
(4) 5-Methoxy-3,4-methylenedioxyamphetamine;
(5) 4-Methyl-2,5-dimethoxyamphetamine;
(6) 3,4-Methylenedioxyamphetamine;
(7) 3,4,5-Trimethoxyamphetamine;
(8) Bufotenine;
(9) Diethyltryptamine;
(10) Dimethyltryptamine;
(11) Ethylamide analog of phencyclidine, PCE;
(12) Ibogaine;
(13) Lysergic acid diethylamide;
(14) Mescaline;
(15) Peyote;
(16) N-Ethyl-3-piperidyl benzilate;
(17) N-Methyl-3-piperidyl benzilate;
(18) Psilocybin;
(19) Psilocyn;
(20) Pyrrolidine analog of phencyclidine, PCPY;
(21) Thiophene analog of phencyclidine;
(22) (Repealed by section 2(a)(3) of the "Uniform Controlled Substances Amendment Act of 1999", D.C. Law 13 (47 DCR 791; 2000));
(23) Parahexyl;
(24) 4-Bromo-2,5-dimethoxyphenethylamine; and
(25) 3,4-Methylenedioxymethamphetamine;

(d) ***Depressants:*** Unless specifically excepted or unless listed in another schedule, any material, compound, or mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system including its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, within the specific chemical designation:

(1) Gamma-Hydroxybutyric Acid [other names include GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium xybutyrate];
(2) Mecloqualone;
(3) Methaqualone; and

(e) ***Stimulants:*** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a

stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Fenethyline; and
(2) N-ethylamphetamine.

1202 SCHEDULE II ENUMERATED

1202.1 The controlled substances listed in this section are included in Schedule II of the Act unless removed therefrom pursuant to section 201 of the Act:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis;

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextophan, nalbuphine, naltrexone, and their respective salts, but including the following:

(A) Raw opium;
(B) Opium extracts;
(C) Opium fluid extracts;
(D) Powdered opium;
(E) Granulated opium;
(F) Tincture of opium;
(G) Codeine;
(H) Ethlymorphine;
(I) Ethorphine Hydrochloride;
(J) Hydrocodone (K);
(K) Metopon;
(L) Morphine;
(M) Oxycodone;
(N) Oxymorphone;
(O) Thebaine;
(P) Hydromorphone;
(Q) Dihydrocodeine;
(R) Sufentanil;
(S) Alfentanil;
(T) Carfentanil;

(2) ***Opium:*** Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subparagraph (1) of this paragraph, but not including the isoquinoline alkaloids of opium;

(3) Opium poppy or poppy straw;

(4) Coca leaves, except coca leaves or extracts of coca leaves from which cocaine, ecgonine, or derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, salts of isomers; or any compound, mixture, or preparation that contains any substance referred to in this paragraph;

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy);

(6) Hashish;

(7) Synthetic Tetrahydrocannabinols: Chemical equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(A) Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;

(B) Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers;

(C) Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers (compounds of these structures, regardless of numerical designation of atomic positions covered); and

(b) ***Opiates:*** Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:

(1) Alphaprodine;
(2) Anileridine;
(3) Benzitramide;
(4) Biphetamine;
(5) Diphenoxylate;
(6) Eskatrol;
(7) Fentanyl;
(8) Fetamine;
(9) Isomethadone;
(10) Levomethorphan;
(11) Levorphanol;
(12) Metazocine;
(13) Methadone;
(14) Methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
(15) Moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
(16) Pethidine (meperidine);
(17) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
(18) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
(19) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
(20) Phenazocine;
(21) Piminodine;
(22) Racemethorphan;
(23) Racemorphan;

(c) ***Stimulants:*** Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamines, its salts, optical isomers, and salts of its optical isomers;
(2) Methamphetamine, its salts, isomers, and salts of isomers;
(3) Phenmetrazine and its salts;
(4) Methylphenidate and its salts; and
(5) Repealed by section 2(b)(2) of D.C. Law 8-138 (37 DCR 2638; June 13, 1990;
(6) Amphetamine/methamphetamine immediate precursor; Phenylacetone (Phenyl-2-propanone), P2P;

(d) ***Depressants:*** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a

depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specifically chemical designation:

(1) Methaqualone;
(2) Amobarbital;
(3) Secobarbital;
(4) Pentobarbital;
(5) Phencyclidine;
(6) Phencyclidine immediate procursors:
  (A) 1-Phenyleyclohexylamine; and
  (B) 1-Piperidinocyclohexanecarbonitrile (PCC);
(7) Dronabinol;
(8) Nabilone; and
(9) Glutethimide.

1203 SCHEDULE III ENUMERATED

1203.1 The controlled substances listed in this section are included in Schedule III of the Act unless removed therefrom pursuant to section 201 of the Act:

(a) Schedule III shall consist of the following controlled substances:

(1) ***Stimulants:*** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, positional, or geometric), and salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures, or preparations were listed on August 25, 1971 as excepted compounds under §1308.32 of the Code of Federal Regulations (CFR), and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;

(B) Benzphetamine;
(C) Chlorphenetermine;

(D) Chlortermine;
(E) Mazindol; and
(F) Phendimetrazine;

(2) ***Depressants:*** Unless listed in another schedule, any material compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with depressant effect on the central nervous system:

(A) Any compound, mixture, or preparation containing:

(i) Amobarbital;
(ii) Secobarbital;
(iii) Pentobarbital; or any salt thereof and 1 or more other active medicinal ingredients which are not listed in any schedule;

(B) Any suppository dosage form containing:

(i) Amobarbital;
(ii) Secobarbital;
(iii) Pentobarbital; or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(C) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid:

(i) Chlorhexadol;
(ii) Rescheduled to Schedule II;
(iii) Lysergic acid;
(iv) Lysergic acid amide;
(v) Methyprylon;
(vi) Sulfondiethylmethane;
(vii) Sulfonethylmethane;
(viii) Sulfonmethane;
(ix) Tiletamine & Zolazepam Combination Product;
(x) Vinbarbital; and

(D) Any drug product containing gamma-hydroxybutric acid including its salts, isomers, and salts of isomers.

(3) Nalorphine; and

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any other following narcotic drugs, or any salts hereof:

(A) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams dosage unit, with 1 or more active nonnarcotic ingredients in recognized therapeutic amounts;

(C) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a 4-fold or greater quantity of an isoquinoline alkaloid of opium;

(D) Not more than 300 milligrams dihydrocodeine per 100 milliliters or not more than 15 milligrams per dosage unit with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(E) Not more than 1.8 grams of dihydrocodeine per milliliters or not more than 90 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(F) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with 1 or more ingredients in recognized therapeutic amounts;

(G) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(H) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(I) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts, as set forth below:

(1) Buprenorphine

(5) ***Anabolic Steroids:*** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, drug, or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progesterons, and corticorsteriods) that promotes muscle growth and includes:

(A) Boldenone;
(B) Chlortestosterone (4-chlortestosterone);
(C) Clostebol;
(D) Dehydrochlormethyltestosterone;
(E) Dihydrotestosterone (4-dihydrotestosterone);
(F) Drostanolone;
(G) Ethylestrenol;
(H) Fluoxymestorone;
(I) Formebulone (formebolone);
(J) Mesterolone;
(K) Methandienone;
(L) Methandranone;
(M) Methandriol;
(N) Methandrostenolone;
(O) Methenolone;
(P) Methyltestosterone;
(Q) Mibolerone;
(R) Nandrolone;
(S) Norethandrolone;
(T) Oxandrolone;
(U) Oxymesterone
(V) Oxymetholone;
(W) Stanolone;
(X) Stanozolol;
(Y) Testolactone;
(Z) Testosterone;
(AA) Trenbolone; and
(BB) Any salts, ester or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and

which has been approved by Secretary of Health and Human Services for such administration. If any person prescribes, dispenses or distributes such steroid for human use such person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of this paragraph.

(6) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product. [Some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-o1] or (-)-delta-9-(trans)-tetrahydrocannabinol]; and

(7) Ketamine;

(b) The Mayor may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (1) and (2) of subsection (a) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains 1 or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiates the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

1204 SCHEDULE IV ENUMERATED

1204.1 The controlled substances listed in this section are included in Schedule IV of the Act unless removed therefrom pursuant to section 201 of the Act:

(a) Schedule IV shall consist of the following controlled substances:

(1) ***Depressants:*** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Barbital;
(B) Chloral betaine;
(C) Chloral hydrate;
(D) Chlordiazepoxide;

(E) Clonazepam;
(F) Clorazepate;
(G) Dextropropoxyphene;
(H) Diazepam;
(I) Ethchlorvynol;
(J) Ethinamate;
(K) Flurazepam;
(L) Lorazepam;
(M) Mebutamate;
(N) Meprobamate;
(O) Methohexital;
(P) Methylphenobarbital (mephobarbital);
(Q) Oxazepam;
(R) Paraldehyde;
(S) Petrichloral;
(T) Phenobarbital;
(U) Prazepam;
(V) Alprazolam;
(W) Bromazepam;
(X) Camazepam;
(Y) Clobazam;
(Z) Clotiazepam;
(AA) Cloxazolam;
(BB) Delorazepam;
(CC) Estazolam;
(DD) Ethyl loflazepate;
(EE) Fludiazepam;
(FF) Flunitrazepam;
(GG) Halazepam;
(HH) Haloxazolam;
(II) Ketazolam;
(JJ) Loprazolam;
(KK) Lormetazepam;
(LL) Medazepam;
(MM) Midazolam;
(NN) Nimetazepam;
(OO) Nitrazepam;
(PP) Oxazolam;
(QQ) Omitted;
(RR) Pinazepam;
(SS) Quazepam;
(TT) Temazepam;
(UU) Tetrazepam; and
(VV) Triazolam;

(2) ***Fenfluramine:*** Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine;

(3) ***Stimulants***: Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(A) Diethylpropion;
(B) Phentermine;
(C) Pemoline (including organometallic complexes and chelates thereof);
(D) Cathine;
(E) Fencamfamin;
(F) Fenproporex;
(G) Mefenorex;
(H) Pipradrol;
(I) SPA;

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation that contains any quantity of the following substances, including its salts:

(A) Dextropropoxyphene (Alpha-(+)-4-demethylamino-1),2-diphenyl-1-3-methyl-2-propionoxybutane;

(B) Pentazocine; and

(5) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof of not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

1205 SCHEDULE V ENUMERATED

1205.1 The following controlled substances listed below are included in Schedule V of the Act unless removed therefrom pursuant to section 201 of the Act:

(a) ***Narcotic drugs containing non-narcotic active medicinal ingredients:*** Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or salts thereof, which also contains 1 or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal quantities other than those possessed by the narcotic drug alone;

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;
(2) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;
(3) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;
(4) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;
(5) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit; and
(6) Not more than 0.5 milligrams of difenopin and not less than 25 micrograms of atropine sulfate per dosage unit;

(b) Cannabis;

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:

(1) Rescheduled to Schedule III.

(d) Propylhexedrine;
(e) Pyrovalerone.

All persons desiring to comment on these proposed rules must submit comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register, to the Department of Health, Environmental Health Administration, Office of Enforcement, 51 N Street, N.E., Room 6036, Washington, D.C. 20002. Copies of these rules may be obtained from the above address.

DEPARTMENT OF HEATH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307. 02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of a new section 927 to Chapter 9 of Title 29 of the District of Columbia Municipal Regulation (DCMR), entitled "Attendant Care Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for attendant care services provided by qualified professionals to participants with mental retardation in the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also establish Medicaid reimbursement rates for attendant care services.

On April 11, 2003, a notice of emergency and proposed rulemaking was published in the *D.C. Register* (50 DCR 2884). These emergency rules amend the previously published rules by adding a section to limit the number of hours a client may receive attendant care services during a one year period to ensure that total expenditures for all home and community-based services and other Medicaid services under the Waiver do not exceed the amount that would be incurred by the State's Medicaid program for these individuals in an institutional setting. This cost neutrality requirement is included in the Waiver application approved by the Centers for Medicare and Medicaid Services (CMS), formerly the federal Health Care Financing Administration. Emergency action is necessary for the immediate preservation of the health, safety, and welfare of waiver participants who are in need of attendant care services.

The emergency rulemaking was adopted on October 27, 2003 and will become effective one day after publication of this notice in the *D.C. Register*. The emergency rules will remain in effect for one hundred and twenty days or until February 24, 2004, unless earlier superseded by another emergency rulemaking or by publication of a notice of final rulemaking in the *D.C. Register*.

The Director gives notice of the intent to take final rulemaking action to adopt these proposed rules not less then thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Amend Title 29 DCMR by adding the following new section 927 (Attendant Care Services) to read as follows:

SECTION 927 ATTENDANT CARE SERVICES

927.1 Attendant care services shall be reimbursed by the Medicaid Program for each participant with mental retardation in the Home and Community Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

927.2 Attendant care services shall consist of hands-on care, of both a supportive and health-related nature, specific to the needs of a medically stable, physically handicapped individual. Supportive services are those services which substitute for the absence, loss, diminution, or impairment of physical or cognitive function.

927.3 Attendant care services eligible for reimbursement include, but are not limited to the following services:

(a) Basic personal care including assistance with bathing and personal hygiene, dressing, grooming, lifting and transferring, feeding and bowel and bladder care;
(b) Household services including assistance with meal preparation, shopping, cleaning and laundry which are incidental to the performance of care;
(c) Cognitive services including assistance with money management, use of medications, and cueing with adaptive living skills;
(d) Mobility services including escort and transporting the client; and
(e) Health-related tasks including those medical tasks that can be performed by an unlicensed person or delegated to an unlicensed person by a licensed health professional to the extent permitted by State law.

927.4 Attendant care services eligible for reimbursement may be provided in the following settings:

(a) An individual's home;
(b) A foster home;
(c) A supervised apartment;
(d) A non-institutional place of residence other than as described in (a) through (c) of this section as permitted by District law.

927.5 Attendant care services are not reimbursable when anyone else in the household is capable of performing these services.

927.6 Attendant care services shall be authorized and provided in accordance with each client's individual habilitation plan (IHP) or individual support plan (ISP).

926.7 Each person providing attendant care services shall be supervised by one of the following:

(a) A registered nurse subject to the requirements set forth in section 927.8;
(b) The client subject to the requirements set forth in section 927.9; or
(c) The client's case manager.

927.8 The frequency and intensity of supervision by the registered nurse shall be specified in the client's written plan of care.

927.9 If consumer directed care, supervision may be furnished by the client when the client has been trained to perform this function and when the safety and efficacy of consumer-provided supervision has been certified in writing by a registered nurse. The certification by the registered nurse shall be based on direct observation of the client and the specific attendant care provider, during the actual provision of care. Documentation of the certification shall be maintained in the client individual plan of care.

927.10 Each provider of attendant care services shall:

(a) Be a non-profit, home health agency, social service agency, or other business entity;
(b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for attendant care services under the Waiver;
(c) Maintain a copy of the most recent IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
(d) Ensure that each person providing attendant care services is qualified and properly supervised;
(e) Be available twenty-four (24) hours a day, seven (7) days a week;
(f) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules; and
(g) Provide training in infection control procedures consistent with the requirements of the Occupational Safety and Health Administration, U.S. Department of Labor regulations at 29 CFR 1910.1030.

927.11 Each person providing attendant care services for a provider under section 927.10 shall meet all of the following requirements:

(a) Be at least eighteen (18) years of age;
(b) Be acceptable to the client;

(c) Be certified in cardiopulmonary resuscitation (CPR) and thereafter obtain CPR certification annually;
(d) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician starting that the person is free from communicable disease;
(e) Have the ability to communicate with the client;
(f) Be able to read and write the English language;
(g) Have a high school diploma or general equivalency development (GED) certificate;
(h) Be able to recognize an emergency and be knowledgeable about emergency procedures;
(i) Agree to carry out the responsibilities to provide attendant care services consistent with the client's IHP or ISP;
(j) Complete pre-service and in-service training approved by MRDDA;
(k) Prior to employment complete a forty (40) hour training including training on body mechanics, which is consistent with the training guidelines for Level 1 Home Care workers established by the National Home Caring Council; and
(l) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code § 44-551 et seq.).

927.12 A family member other than a spouse or parent of a minor recipient may provide attendant care services. Each family member providing attendant care services shall meet all the requirements set forth in sections 927.10 and 927.11 of these rules.

927.13 Each provider shall notify the client's case manager and the client or client's representative, in writing, no less than seven (7) calendar days prior to discharge or referral. The seven (7) day written notice shall not be required and oral notice may be given, if the discharge is the result of:

(a) A medical emergency;
(b) A physician's order to admit the client to an inpatient facility;
(c) A determination by the provider that the discharge or referral is necessary to protect the health, safety or welfare of agency staff; or
(d) A determination by the ISP or IHP team that the condition that necessitated the provision of services no longer exists.

927.14 If the client seeks to change providers, the provider shall assist the client in selecting a new provider and cannot abandon the client until the transfer has been successfully completed.

927.15 Each provider shall develop contingency staffing plans to provide coverage for each client in the event the assigned attendant care aide cannot provide the services or is terminated.

927.16 The billable unit of service for attendant care services shall be one hour.

927.17 The reimbursement rate for attendant care services shall be $13.50 per hour.

927.18 Attendant care services shall be limited to 1040 hours per client during any one (1) year period, which shall commence on the date that services are authorized.

927.99 DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed.

Activities of Daily Living-The ability to get in and out of bed, bathe, dress, eat, take medication prescribed for self-administration and to engage in toileting.

Client-An individual with mental retardation who has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities.

Communicable Disease- Shall have the same meaning as set forth in section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

Family- Any person related to the client by blood, marriage or adoption.

Individual Habilitation Plan (IHP) – That plan as forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Individual Support Plan (ISP)- The successor to the individual habilitation plan (IHP) as defined in the court-approved Joy Evans Exit Plan.

Provider-Any non-profit, home health agency, social service agency or other business entity that provides services pursuant to these rules.

Registered Nurse- A person who is licensed or authorized to practice registered nursing pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code, § 3-1202 et seq.) or licensed as a registered nurse in the jurisdiction where the services are provided.

Supervised Apartment- A living arrangement for one to three clients with mental retardation that provides drop-in to twenty-four hour supervision and is funded by the department of Human Services, Mental Retardation and Developmental Disabilities Administration through a Human Care Agreement.

Comments on the proposed rules shall be submitted in writing to Robert T. Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E. 5th Floor, Washington D.C.20002, within thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in an Act to enable the District of Columbia (the District) to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat.744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of a new section 946 to Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Residential Habilitation Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid program for residential habilitation services provided by qualified professionals to participants with mental retardation in the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also authorize Medicaid reimbursement for residential habilitation services for person with mental retardation.

On July 11, 2003, a notice of emergency and proposed rulemaking was published in the *D.C. Register* (50 DCR 5595). These emergency and proposed rules supercede and replace the rules previously published on July 11, 2003 by making several technical corrections, including clarifying that professional services may be provided by other service providers and requiring one year of experience for persons employed by the provider. Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of residential habilitation services.

The emergency rulemaking was adopted on November 3, 2003 and will become effective on the date of publication of this notice of emergency and proposed rulemaking in the *D.C. Register*. The emergency rules will remain in effect for 120 days or until March 2, 2004 unless superceded by publication of a Notice of Final Rulemaking in the *D.C. Register,* whichever comes first.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Title 29 (Public Welfare)(May 1987) of the District of Columbia Municipal Regulations is amended by adding a new section 946 to read as follows:

SECTION 946 RESIDENTIAL HABILITATION SERVICES

946.1 Residential habilitation services shall be reimbursed by the Medicaid Program for each participant with mental retardation in the Home and Community Based Waiver for Persons with Mental Retardation and

Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

946.2 In order to qualify for reimbursement under this section, residential habilitation services shall be provided in a group home for mentally retarded persons (GHMRP), that has at least four (4) but no more than six (6) clients.

946.3 Each GHMRP shall be licensed pursuant to the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §44-501 *et seq.*). and comply with the requirements set forth in Chapter 35 of Title 22 of the District of Columbia Municipal Regulations, except as set forth in these rules.

946.4 Residential habilitation services shall only be available to clients with a demonstrated need for continuous training, assistance and supervision, and shall be authorized and provided in accordance with the client's individual habilitation plan (IHP) or individual support plan (ISP).

946.5 Each provider of residential habilitation services shall assist with the acquisition, retention and improvement in skills related to activities of daily living, such as personal grooming, household chores, eating and food preparation, and other social adaptive skills necessary to enable the client to reside in the community.

946.6 Consistent with the requirements set forth in section 3521 of Chapter 35, Title 22 DCMR, each provider of residential habilitation services shall ensure that each client of the GHMRP receive training and habilitation, when appropriate, which shall include but not be limited to the following areas:

(a) Eating and drinking;
(b) Toileting;
(c) Personal hygiene;
(d) Dressing;
(e) Grooming;
(f) Health care;
(g) Communication;
(h) Interpersonal and social skills;
(i) Home management;
(j) Employment and work adjustment;
(k) Mobility;
(l) Time management;
(m) Financial management;
(n) Academic and pre-academic skills;

(o) Motor and perceptual skills;
(p) Problem-solving and decision-making;
(q) Human sexuality;
(r) Aesthetic appreciation; and
(s) Opportunity for social, recreational and religious activities utilizing community resources.

946.7 Consistent with the requirements set forth in section 3520 of Chapter 35, Title 22 DCMR, each provider of residential habilitation services shall ensure that each client receives the professional services required to meet his or her goals as identified in the client's IHP or ISP. Professional services shall be provided by programs operated by the GHMRP or personnel employed by the GHMRP or by arrangements between the GHMRP and other service providers, including both public and private agencies and individual practitioners. Professional services may include, but are not limited to the following disciplines or services:

(a) Medicine;
(b) Dentistry;
(c) Education;
(d) Nutrition;
(e) Nursing;
(f) Occupational Therapy;
(g) Physical Therapy;
(h) Psychology;
(i) Social Work;
(j) Speech and language therapy; and
(k) Recreation.

946.8 Each provider of residential habilitation services shall ensure the provision of transportation services to enable the clients to gain access to Waiver and other community services and activities. Each provider of transportation services shall have a current District of Columbia Medicaid Provider Agreement that authorizes the provision of transportation services under the Waiver.

946.9 The minimum daily ratio of on-duty, direct care staff to clients in each GHMRP that serves severely physically handicapped clients, clients who are aggressive, assaultive or security risks, clients who manifest severely hyperactive or psychotic-like behavior, and other clients who require considerable adult guidance and supervision shall be not less than the following:

(a) 1:4 during the waking hours of the day, approximately 6:00 a.m. to 10:00 p.m., when clients remain in the GHMRP during the day; and

(b) 1:6 during sleeping, approximately 10:00 p.m. to 6:00 a.m.

946.10 The minimum daily ratio of on-duty, direct care staff to clients present in each GHMRP that serves clients who require training in basic independent-living skills shall be not less than the following:

(a) 1:6 during the waking hours, approximately 6:00 a.m. to 2:00 p.m., when clients remain in the GHMRP during the day;
(b) 1:4 during the period of approximately 2:00 p.m. to 10:00 p.m., and
(c) 1:6 during sleeping hours, approximately 10:00 p.m. to 6:00 a.m.

946.11 The minimum daily ratio of on-duty direct care staff to clients in each GHMRP that serves clients who are in day programs such as sheltered workshops, vocational training, supported or competitive employment programs, and who have acquired basic independent-living and survival skills shall not be less than 1:6 at all times that clients are in the GHMRP.

946.12 The minimum daily staffing levels set forth in sections 946.9 through 946.11 in each GHMRP shall be increased if required by the client, as indicated in the client's IHP or ISP.

946.13 Each provider of residential habilitation services shall:

(a) Be a non-profit or other business entity;
(b) Be a member of the interdisciplinary team;
(c) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for residential habilitation services under the Waiver;
(d) Maintain a copy of the most recent IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA) for each client;
(e) Have a current Human Care Agreement with MRDDA for the provision of residential services;
(f) Ensure that all residential habilitation services staff are qualified and properly supervised;
(g) Ensure that the services provided are consistent with the client's IHP or ISP;
(h) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules;
(i) Provide staff training in infection control procedures consistent with the standards established by the federal Centers for Disease Control and Prevention (CDC);

(j) Ensure that each staff member or employee has been screened for communicable disease six months prior to providing services to any client, in accordance with the guidelines issued by the CDC, and that each employee or staff member is certified to be free of communicable disease; and
(k) Ensure compliance with all of MRDDA's policies governing reporting of unusual incidents, human rights, behavior management and protection of clients' funds.

946.14 Each person providing residential habilitation services for a provider under section 946.13 shall meet all of the following requirements:

(a) Be at least eighteen (18) years of age;
(b) Be screened annually for communicable disease, according to the guidelines issued by the CDC and demonstrate that he or she is free of communicable disease;
(c) Be able to read and write the English language;
(d) Agree to carry out the responsibilities to provide residential habilitation services consistent with the client's IHP or ISP;
(e) Have a high school diploma or general educational development (GED) certificate;
(f) Have a minimum of one year work experience; and
(g) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code § 44-551 et seq.).

946.15 Each client's case manager shall monitor the delivery of services by conducting visits at least eight (8) times per calendar year to ensure that services are delivered in accordance with the IHP and ISP.

946.16 Each provider of residential habilitation services shall maintain progress notes monthly or more frequently if indicated, conduct periodic reviews of progress and maintain financial records of expenditures of public funds for each client.

946.17 Each provider of residential habilitation services shall maintain all records and reports for at least six (6) years after the client's date of discharge.

946.18 Residential habilitation services shall not be reimbursed when provided by a member of the client's family.

946.19 Reimbursement for residential habilitation services shall not include:

(a) The cost of room and board;
(b) The cost of facility maintenance, upkeep and improvement; or
(c) Activities or supervision for which a payment is made by a source other then Medicaid.

946.20 The reimbursement rate for residential habilitation services shall be as follows:

(a) $103.00 per diem, without an acuity adjustment; or
(b) $135.00 per diem, including an acuity adjustment.

946.21 Each client shall be screened by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA) using the Health Risk Screening Tool (HRST). If, the client's health care level is 3 or above as determined by the HRST, the rate shall include an acuity adjustment and reimbursement shall be made in accordance with section 946.20(b) of these rules.

946.22 If the reimbursement rate includes an acuity adjustment as set forth in section 946.20(b) of these rules, skilled nursing services and preventative, consultative and crisis support services shall be subject to the following limitations:

(a) Skilled nursing services shall not be billed in excess of the initial assessment and one (1) visit per quarter; and
(b) Preventative, consultative and crisis support services shall not be billed in excess of the initial assessment and one (1) visit per quarter.

946.23 Residential habilitation services shall not be billed concurrently with the following Waiver services:

(a) Environmental Accessibility Adaptation;
(b) Homemaker;
(c) Attendant care;
(d) Family Training;
(e) Independent Habilitation;
(f) Personal Care Services;
(g) Respite;
(h) Chore;
(i) Adult Companion; or
(j) Personal Emergency Response System (PERS).

946.24 Residential habilitation services shall not be billed when the client is hospitalized, on vacation or for any other period in which the client is not residing at the GHMRP.

946.25 MRDDA shall be responsible for payment of nursing services for the administration of medication to clients when the client is unable to self- administer or take medication independently. Nursing services attributable to the administration of medication shall not be billed as Waiver services.

946.99 DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed:

Client-an individual who has mental retardation and has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

Communicable Disease-that term as set forth in Section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

Direct Care Staff- individuals employed to work in the GHMRP who render the day-to-day personal assistance clients require in order to meet the goals of their IHP or ISP.

Group Home for Mentally Retarded Persons or GHMRP- a community residence facility, other than an intermediate care facility for persons with mental retardation, that provides a home-like environment for at least four (4) but no more than six (6) related or unrelated mentally retarded individuals who require specialized living arrangements and maintains necessary staff, programs, support services and equipment for their care and habilitation.

Health Risk Screening Tool- a mechanism for evaluating and identifying the diagnostic and training needs required by the client to ensure the client's health and safety in the least restrictive environment.

Individual Habilitation Plan or IHP-that term as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.3).

Individual Support Plan or ISP- the successor plan to the individual habilitation plan (IHP) as defined in the court-approved *Joy Evans* Exit Plan.

Interdisciplinary team- a group of persons with special training and experience in the diagnosis and habilitation of mentally retarded persons which has the responsibility of performing a comprehensive evaluation of each client and participating in the development, implementation, and monitoring of the client's IHP or ISP.

Comments of the proposed rules should be sent in writing to Robert Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002, not later than thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.

DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

DOCKET NO. 03-70-TS

The Director of the Department of Transportation, pursuant to the authority in sections 3, 5(3), and 6 of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.02, 50-921.04(3) and 50-921.05), and sections 6(a)(1), 6(a)(6) and 6(b) of the District of Columbia Traffic Act, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code § 50-2201.03(a)(1), (a)(6) and (b)), hereby gives notice of the adoption of the following emergency rulemaking which amends Chapter 40 of the Vehicles and Traffic Regulations (18 DCMR) to amend section 4002 of the District of Columbia Municipal Regulations by adding a new subsection 4002.4 which would specify that the No Trucks restrictions may apply at specified locations at all times. The rulemaking would also provide for all trucks to be restricted from the 31st Street, N.W. Bridge to be listed under the newly established subsection 4002.4.

Emergency rulemaking action, pursuant to section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c)), was necessary to restrict all trucks due to the deterioration of the 31st Street, N.W. Bridge, and the threat of the bridge collapsing under the pressure of truck traffic. Therefore, since it is this Department's policy to protect the public from the possibility of a collapsing bridge an independent determination has been made by the District Department of Transportation to restrict all truck traffic from using this bridge, until the necessary repairs have been completed. There are alternate routes that these trucks can use such as M Street, Thomas Jefferson Street, a through alley from Thomas Jefferson Street to 31st Street. Areas for trucks to turn around north of the Canal are Blue's Alley and Cannon's Alley. Trucks can be detoured to South Street.

This emergency action was taken to provide for the immediate preservation of the public health, safety and welfare. The emergency rulemaking was adopted on October 29, 2003, and became effective immediately upon that date.

The Director also gives notice of intent to take final rulemaking action to adopt this amendment in not less than thirty (30) days from the date of publication of this notice in the D.C. Register,

These emergency rules will expire on February 26, 2004, or upon the publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

Title 18 DCMR, Chapter 40, Section 4002, TRUCK RESTRICTIONS, Subsection 4002.4, (a) Northwest Section, is amended by adding the following to the list of locations where TRUCK RESTRICTIONS are installed:

"On the 31st Street, N.W. Bridge."

All persons interested in commenting on the subject matter in this emergency and proposed rulemaking action may file comments in writing, not later than thirty days (30) days after the publication of this notice in the D.C. Register, with the Department of Transportation, Traffic Services Administration, 2000 14th Street, N.W., 7th Floor, Washington, D.C. 20009 (Attention: Docket No. 03-70-TS). Copies of this proposal are available, at cost, by writing to the above address.